IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.8943 of 1998

Between:

M/s Hindustan Shipyard Ltd.

Rep. by its Chairman & Managing Director,
Rear Admiral R.M.Bhatia, Visakhapatnam.

..... PETITIONER

AND

1 The Hon'ble Industrial Tribunal-cum -Labour Court,

Rep. by its Chairman,
Ramnagar, Visakhapatnam.
2 Mr. V.Srinivasa Rao C/o Mr. P.Someshwara Rao
D.No.50-38-1, TPT Colony, Sitarammadhara, Visakhapatnam
3 The State of Andhra Pradesh, Rep. by its Secretary,

Incharge Labour, Secretariat, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue notice calling for the records, quash and set aside the Award made in I.D.No.116/1994 dt.7/01/1998 on the file of the Hon'ble Industrial Tribunal-cum Labour Court, Visakhapatnam, by issuing a Writ of Certiorari or any other appropriate writ or order or direction or directions as the Hon'ble Court may deem fit and proper in the circumstances of the case and to grant such other relief the petitioner is entitled to and to allow the writ petition with costs .

Counsel for the Petitioner: Mr. P.NAGESWAR SREE

Counsel for Respondents 1 & 3: GP FOR LABOUR

Counsel for Respondent No.2 : Mr. K.V. SUBRAHMANYA NARSU

The Court made the following :

ORAL ORDER:

This Writ Petition is filed, by the Management, aggrieved by the Award dated 7-1-1998 made in I.D.No.116 of 1994 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam.

Respondent No.2 laid a claim before the Tribunal stating that his services were illegally terminated by the Management (writ petitioner) on the ground of insubordination and disobedience of instructions issued by his superiors. He stated that he joined the service of the Management in the month of February,1988 as casual Erectormate. He was transferred to OPF on temporary basis with effect from 3-8-1992. Later, he was asked to work as Grinder with effect from 19-10-1992. He was never issued with any order designating him as Helper-cum-Grinder. On the other hand, it was for the first time that he came to be designated as Helper-cum-Grinder in the Memorandum dated 21-1-1993 containing the allegation that he had refused to carry out the duties of Helper-cum-Grinder assigned to him. On the basis of the so called misconduct, the management issued a charge sheet and conducted a detailed inquiry into the matter. After complying with the formalities, the disciplinary authority passed orders removing him from service. Aggrieved by the same, he raised an industrial dispute. The Management filed a detailed counter affidavit before the Tribunal denying the allegations made by the workman and seeking to reject the claim of the workman as unreasonable.

No oral or documentary evidence was adduced by either party before the Tribunal. The Tribunal, after a detailed consideration of the matter, passed an Award setting aside the order of removal and directing the management to reinstate the workman with 50% of back wages and continuity of service and also to pay a sum of Rs.500/- towards costs. Challenging the same, the present writ petition is filed.

Heard both sides.

I have given my earnest consideration to the submissions made by both the learned counsel and gone through the impugned Award and also the other material made available on record.

Admittedly, the respondent-workman was only a casual labourer entrusted with various duties as per the requirement of the Management. On 21-1-1993 when he refused to attend to the works assigned to him, a charge sheet was issued and an inquiry was conducted. The claim of the workman was that R. Apparao, who directed him to do a particular work, is not superior to him and he need not obey his directions; therefore, there is no disobedience on his part, apart from the fact that he was never designated as Helper-cum-Grinder. It is also his claim that there is a change of service conditions and the same could not have been done without following the procedure as contemplated under Section 9-A of the Industrial Disputes Act,1947 (for brevity 'the Act'). The Tribunal, since both the parties failed to adduce any oral or documentary evidence, just on the basis of the claim statement and also the counter affidavit filed by the Management decided the matter on merits. The Tribunal came to the conclusion that absolutely there was no proof on record that R.Apparao was the superior of the 2nd respondent-workman. It also refers to the fact that M.Ws.2 and 3 did not say that anybody advised the workman to do any work (these witnesses – M.Ws.2 and 3 – seem to be examined before the Enquiry Officer and not before the Tribunal). Even the Enquiry Officer's report was not marked before the Tribunal. It also refers to the explanation submitted by the workman, wherein he stated that he had complied with the orders as it was explained in the concerned order that they were assigned with the work of Grinders. R. Apparao was not superior to him and the change of conditions of service of a skilled worker is contrary to Section 9-A of the Act. The Tribunal simply carried away by the statement of the workman that the procedure as required under Section 9-A of the Act was not followed. Admittedly, the workman was only a casual labourer and he is supposed to work wherever the work is available and whatever is entrusted to him. May be, this is a case where the management ought not to have imposed an extreme punishment of removal from service in view of the trivial charge framed against the workman, even if the charges are proved. Therefore, I am of the opinion that the Award passed by the Tribunal setting aside the order of removal passed by the

Management cannot be said to be arbitrary or illegal. However, the relief of granting of 50% of back wages is uncalled for in the circumstances of the case. There is some misconduct on the part of the workman and he himself admitted in the explanation submitted to the charge sheet. However, he claimed protection of Section 9-A of the Act, which cannot be accepted, since he was only a casual labourer. Therefore, I am of the considered view that though the respondent-workman is entitled for reinstatement with continuity of service, but is not entitled for 50% of back wages as awarded by the Tribunal and also the costs of Rs.500/-.

In the circumstances, the impugned Award is modified to the following extent:

> "The respondent-management is directed to reinstate the workman with continuity of service and other attendant benefits, but without any back wages"

Accordingly, the Writ Petition is disposed of. No order as to costs.

07-6-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chairman, Industrial Tribunal-cum -Labour Court,

Ramnagar, Visakhapatnam.

2 V.Srinivasa Rao C/o P.Someshwara Rao
D.No.50-38-1, TPT Colony, Sitarammadhara, Visakhapatnam

3 The Secretary, Incharge of Labour Department,

State of Andhra Pradesh, Secretariat, Hyderabad.

4 2 CCs to Government PIeader for Labour, High Court Buildings,

Hyderabad (OUT)

5 2 CD copies